



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 30, 2023

IN THE MATTER OF:

Appeal Board No. 627036

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 627034, 627035 & 627036, the claimant appeals from the decisions of the Administrative Law Judge filed, December 9, 2022, which denied the claimant's application to reopen and continued in effect the prior decisions that sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 30 through November 9, 2020, on the basis that the claimant was not available for employment; holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits; charging the claimant with an overpayment of \$1,865.50 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); charging the claimant with an overpayment of \$1,200 in Lost Wage Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and charging a civil penalty of \$279.82 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 627037, 627038 & 627039, the claimant appeals from the decisions of the Administrative Law Judge filed, December 9, 2022, which denied the claimant's application to reopen and continued in effect the prior decisions that sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 19 through April 5, 2021, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$455 in PUA benefits recoverable pursuant to Section 2102 (h) of the CARES Act of 2020 and 20 CFR Section 625.14 (a); charging the claimant with an overpayment of \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2)

of the CARES Act of 2020; and charging a civil penalty of \$158.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined hearing before the Administrative Law Judge, testimony was taken. There were appearances by and on behalf of the claimant.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. The record was not sufficiently developed on the issues of the claimant's applications to reopen. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

Although the claimant could not recall why he was unable to appear for the September 15, 2022 hearing, the claimant's application to reopen, faxed document dated and received September 15, 2022, provides an explanation for his failure to appear. This document shall be received into evidence after appropriate confrontation and opportunity for objection.

We also note that the claimant contended, during the hearing of August 30, 2022, that he did not appear at the January 7, 2022 hearing because he had a medical appointment in the morning. He also contended that he did not appear at the June 29, 2022 hearing because he was not called - the transcript of the June 29, 2022 hearing reveals that there may have been a phone problem.

The Judge should take any testimony and evidence on the applications to reopen and the merits to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on all issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard;

and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on all issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER